
Is cable part of the relevant (product) market?

A Belgian perspective

CLEC seminar

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together with



Context



- Belgian broadband and access markets characterised by strong infrastructure competition at the retail level
 - Two competing infrastructures ubiquitous present in the markets
 - Almost 1 out of 2 retail broadband lines are build on cable infrastructure
- Strong regional differences in market positions between the cable zones
 - E.g. Telenet in its covered area (Flanders + part of Brussels)
- Present market analysis (Ma 11 – 12/2003, decision of 10 January 2008)
 - Does not include cable (nor direct, not indirect)
 - Belgacom has 100% market share
 - Full fletched regulation both on traditional broadband (ADSL) and on NGA (FFTC)

What's the real question?



- The question is not
 - ‘is cable in or out of the market the relevant markets 4 and 5?’
 - ‘should cable be included in the relevant market ‘
- The real & core question is rather:

‘what could justify to leave cable out of the relevant market?’

- Many ways to rephrase this question:
 - What justification to ignore the market realities?
 - Why ignoring the retail-wholesale link?
 - Why the general principles of the framework would not apply to cable?
 - ...

Principles to observe in market definition and analysis



1. Wholesale market definition and assessment should be derived from the situation on the retail markets .
 - Demand for a wholesale product is a derived demand for access at the retail level
 - Objective of regulation is to protect end-users' interests & competition at retail level
 - Guarantees a market analysis taking into account the economic reality of the markets

2. Market definition and analysis – as regulation in general - should be technologically neutral.

3. Market analysis and definition should be prospective
 - Take into account expected or foreseeable market developments
 - At least for the period until the next market review.

Principles to observe in market definition and analysis (cont'd)



4. Market definition and analysis should be done without taking into account the regulation in place on the markets analysed
 - Indeed, goal is to assess whether there is - absent ex-ante regulation - a substantial degree of market power in the end-to-end retail market potentially harming consumers.
 - This is the so-called (modified) Greenfield approach.

5. The regulator should during market definition and market analysis minimize the risk of error, be it:
 - intervention when such intervention is not justified to maximize the welfare of the consumers
 - no intervention when such intervention would be justified

- Failing to observe the abovementioned principles would almost unavoidably lead to such error

What could justify to leave cable out of the relevant market?



1. Recommendation on relevant markets 2007 vs. 2003: Cable clearly in scope of markets 4 and 5
 - Technological neutrality
 - General definitions of access / broadband access
 - Market 4 in principle all physical access
 - Market 5: in principle all non-physical / virtual access
 - no longer 'if and when they offer facilities equivalent to bitstream access'

2. Living up to the concepts and principles of the framework
 - E.g. wholesale as a derived market:
 - Cable clearly in the retail market.
 - Common EC practice: Where cable has significance it has been taken in the market (mostly indirectly)
 - No precedent, but a case by case on national circumstances
 - Belgian broadband markets characterised by the ubiquitous presence of cable with high/progressing market shares.

What could justify to leave cable out of the relevant market? (cont'd)



3. The need to reflect the economic reality
 - Infrastructure competition is a reality
 - >40% of broadband customers in Belgium are on cable infrastructure
 - Predominantly in the North of the country (Telenet zone)
 - The definition of a relevant wholesale market, is a
 - Regulatory tool for analytical reasons
 - To determine whether there is a dominance harming consumers on the end-to-end retail
 - Not capturing cable in the market definition ends up in analysing a fiction.
 - Leads unavoidable to errors (cf. 5th principle above: minimize error)

What could justify to leave cable out of the relevant market? (cont'd)



4. “Regulatory technical” parameters leave no doubt on a cable inclusion
 - Strong economic metrics on competitive constraints from cable on DSL.
 - Objections generally forwarded in this debate are not relevant in Belgium:
 - No technological constraints to unbundle/provide bitstream:
 - Danish regulator NITA: on a network with state of the art technical characteristics (Docsis 3.0) 3rd party access is technically and economically feasible (Docsis 3.0 is a reality in Belgium) – see also virtualisation of access
 - Sufficient capacity (based on state of investments & technology)
 - No limited geographical coverage in Belgium: ubiquitous presence of cable
 - >80% of population has access to cable
 - Main cable competitor covers nearly 60% of population in a homogeneous geographical area (= Flanders + part of Brussels).
 - Switching costs for access seekers: not higher than for other moves to NGA’s
 - See also DK → NITA: economically feasible resulting in reasonable wholesale prices.
 - Confirmed by other studies.
 - No demand : interest publicly expressed by Base and EDPNet. Likely others.
 - Other parameters, such size & scope of company, financial situation, ... only relevant in SMP analysis, not in market definition.

What could justify to leave cable out of the relevant market? (cont'd)



5. Why is the inclusion of cable an issue?

- No need to fear a mirroring of reality
- Either the inclusion
 - Would not affect the outcome of the analysis:
 - Gain of legitimacy for the market analysis
 - Benefits all parties as it provides legal and regulatory security
 - Would affect the outcome of the analysis:
 - This as such justifies the inclusion, as this is the only way to avoid errors (cf. 5th principle)
 - Once again security and legitimacy are served by the inclusion
- Thus, only inclusion of cable can provide a correct market analysis

Concluding remarks



- Clearly no reasons to leave cable out of the analysis
 - If not in analysis: risk for irrelevancy and error are high
 - If in → fits reality, more legitimacy – thus legal certainty
 - All “classical objections” are proven to have no relevance in a Belgian context
 - Considering the state of the Belgian broadband markets at retail level, a non inclusion of cable could be considered as a form of “access holiday” (shelter from potential (!) regulation and/or effect on regulation).
- Quid access to cable?
 - A question that can only be answered by an analysis of the relevant markets in which cable is included. → Task of the regulator.
 - Technically and economically feasible.
- What matters? An equal treatment between all broadband infrastructure (i.e. Cable and DSL).
 - First step is to analyse and approach both in the same context (i.e. relevant markets)
 - Second step is to apply to a same position the same consequences in terms of obligations and constraints.



Thank you for your attention