



Current Status of Notifications under the EU Consultation Procedure regarding Cable Networks

CLEC Seminar - Electronic Communications Regulation and
Cable Networks
Brussels, 30/09/2010

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Table of Content

- The SMP Regime
- Markets relevant to cable
- Cable and wholesale infrastructure access (Market 4)
- Cable and wholesale broadband access (Market 5)
- Conclusions

The SMP Regime

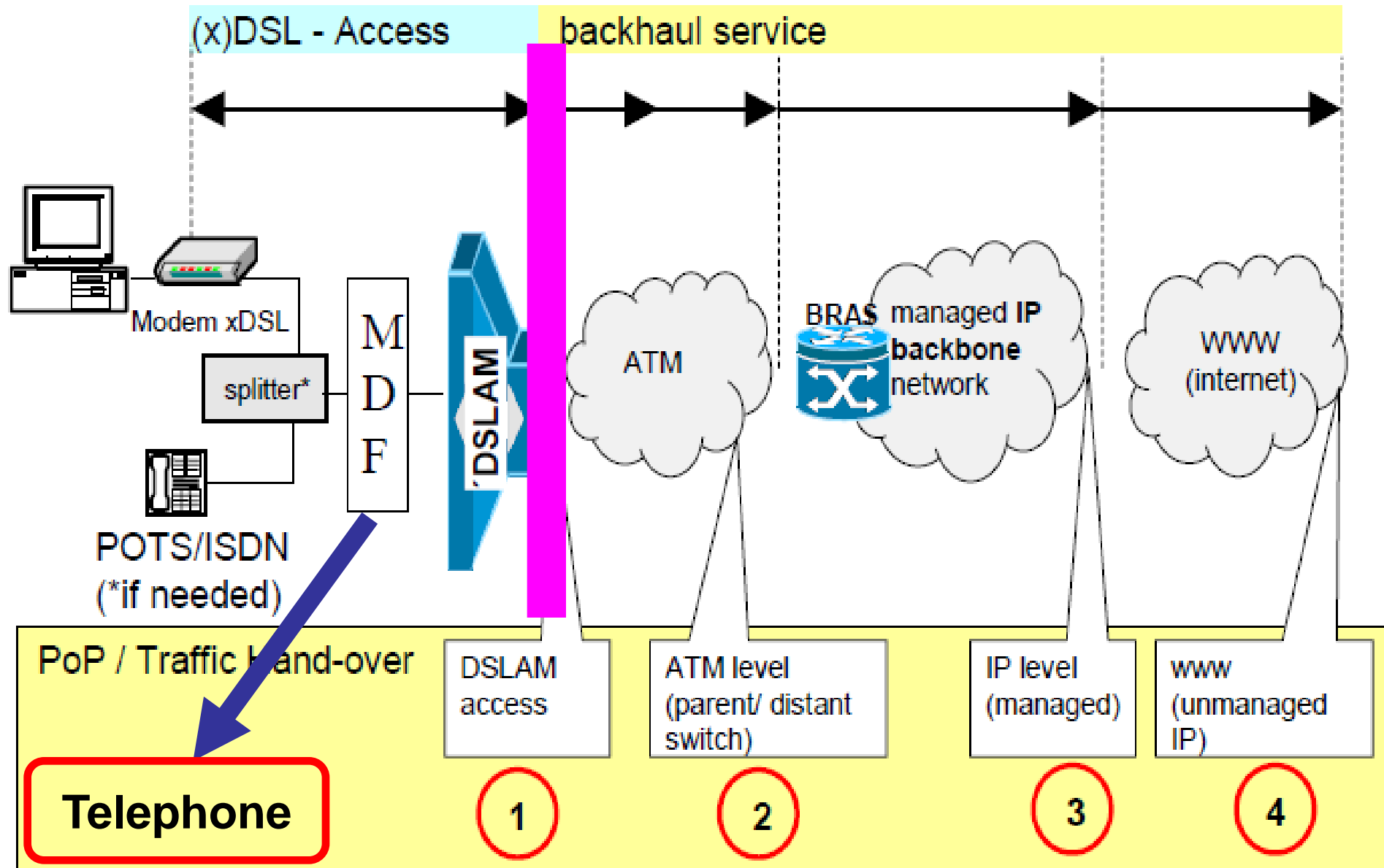
In order to impose remedies NRAs must conduct a so-called three-step analysis:

- Define a relevant market;
- Assess whether there is an undertaking, or undertakings, with significant market power (SMP);
- Impose remedies only on undertaking(s) with SMP.

Markets related to cable

- Market 4 is defined as “wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location”
- Market 5 is defined as “wholesale broadband access”
- Ex Market 18: wholesale broadcasting transmission

Market 4 and 5: DSL as an example



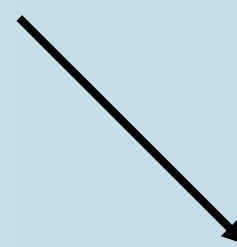
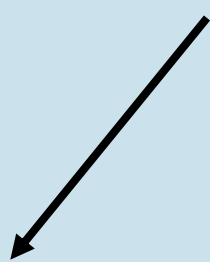
Should cable be included into Market 4: Commission View

- Can cable be unbundled?
- Commission says “NO” technically.
- Conclusion: cable should **NOT** be included into Market 4.



Should cable be included into Market 4: NRAs perspective

1 vs. 2 vs. 24



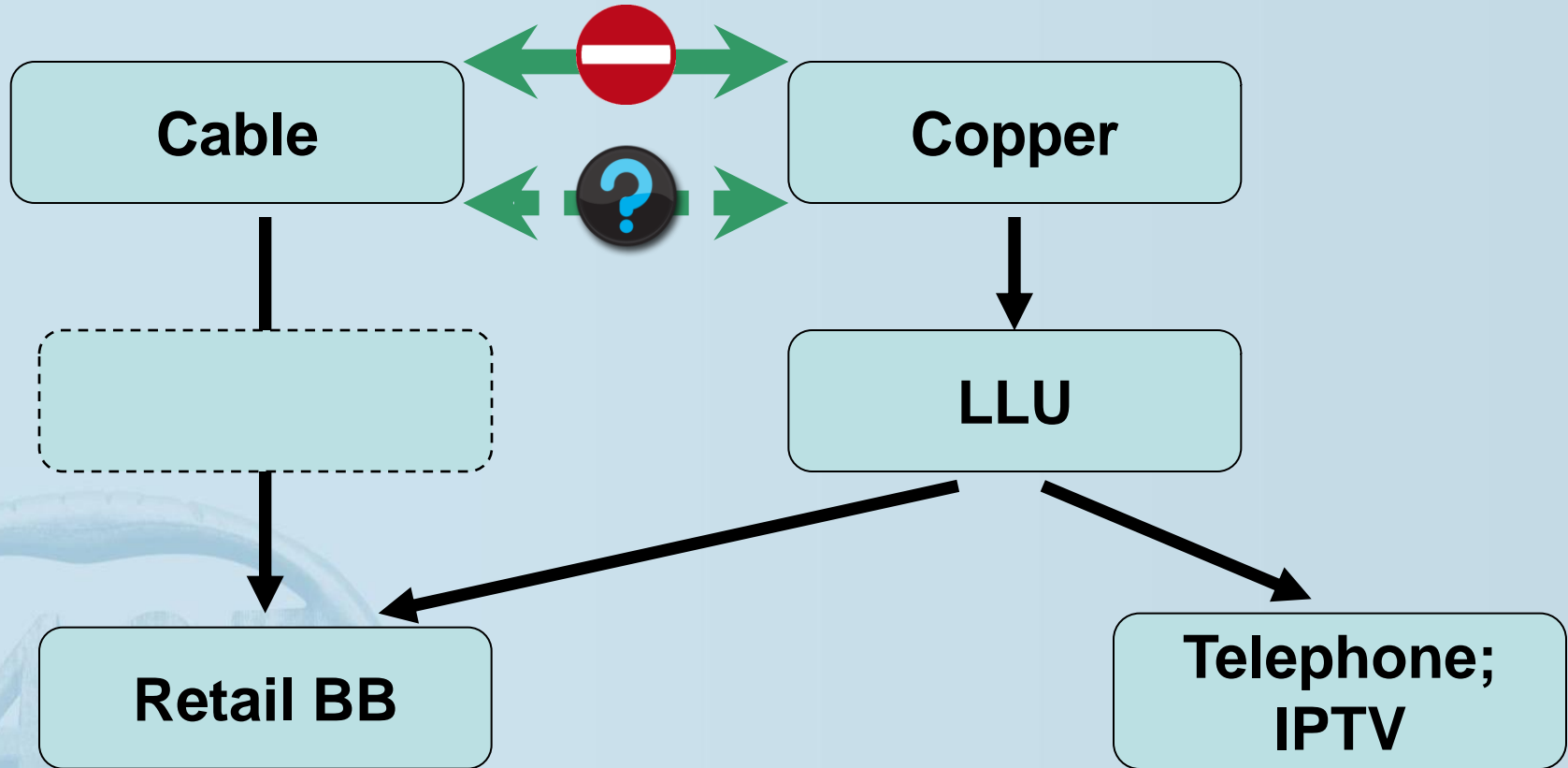
**Not Notified
(Bulgaria)**

**YES
(Portugal,
UK)**

**NO
(the other)**

Portugal & UK

Anacom and Ofcom included cable based not on direct constraint, but on indirect constraint.



Therefore, Commission disagreed.

Should Cable be included in Market

5: Commission View

1. Can cable provide WBA technically? Yes, examples in DK, FI, NL, and PT.
2. Is cable substitutable for copper (direct constraint)? Economically difficult, given sunk costs, switching costs, time, *etc.*
3. Can cable exert indirect constraint?
 1. Yes: high standard of proof.
 2. No: (i) no MS succeeded in this test, and (ii) should be considered with SMP.
4. Conclusion: Cable should not be regulated.

Should Cable be included in Market 5: NRAs perspective

Yes (16 MS, 60%)

- Austria
- Denmark
- Estonia
- Finland
- France
- Germany
- Ireland
- Latvia
- Malta
- Romania
- Netherlands
- Portugal
- Poland
- Slovenia
- Sweden
- UK

No (10 MS, 40%)

- Belgium
- Cyprus
- Czech Republic
- Greece
- Hungary
- Italy
- Lithuania
- Luxembourg
- Slovenia
- Spain

* Bulgaria not notified

MS that included cable into Market 5

It Does Not Matter	It Does Matter
1. Austria	1. Denmark
2. Estonia	2. Malta
3. Finland	3. Portugal
4. France	4. UK
5. Germany	
6. Ireland	
7. Latvia	
8. Netherlands	
9. Romania	
10. Poland	
11. Slovakia	
12. Sweden	

Denmark

- It is the only MS imposing access obligation on cable;
- The incumbent controls both copper and cable; Moreover, a possible market failure of selective investment only on cable, NOT on copper, in order to avoid access obligation.
- Commission comments:
 - The inclusion may be not appropriate;
 - But the concern is genuine and must be addressed.

- Inclusion of cable made this market competitive;
- Direct constraint at the wholesale level. The Commission had no comments (the only case);
- Nevertheless, infrastructure competition:
 - Three operators with distinct networks of national coverage: cable, copper and wireless.

Portugal and the UK

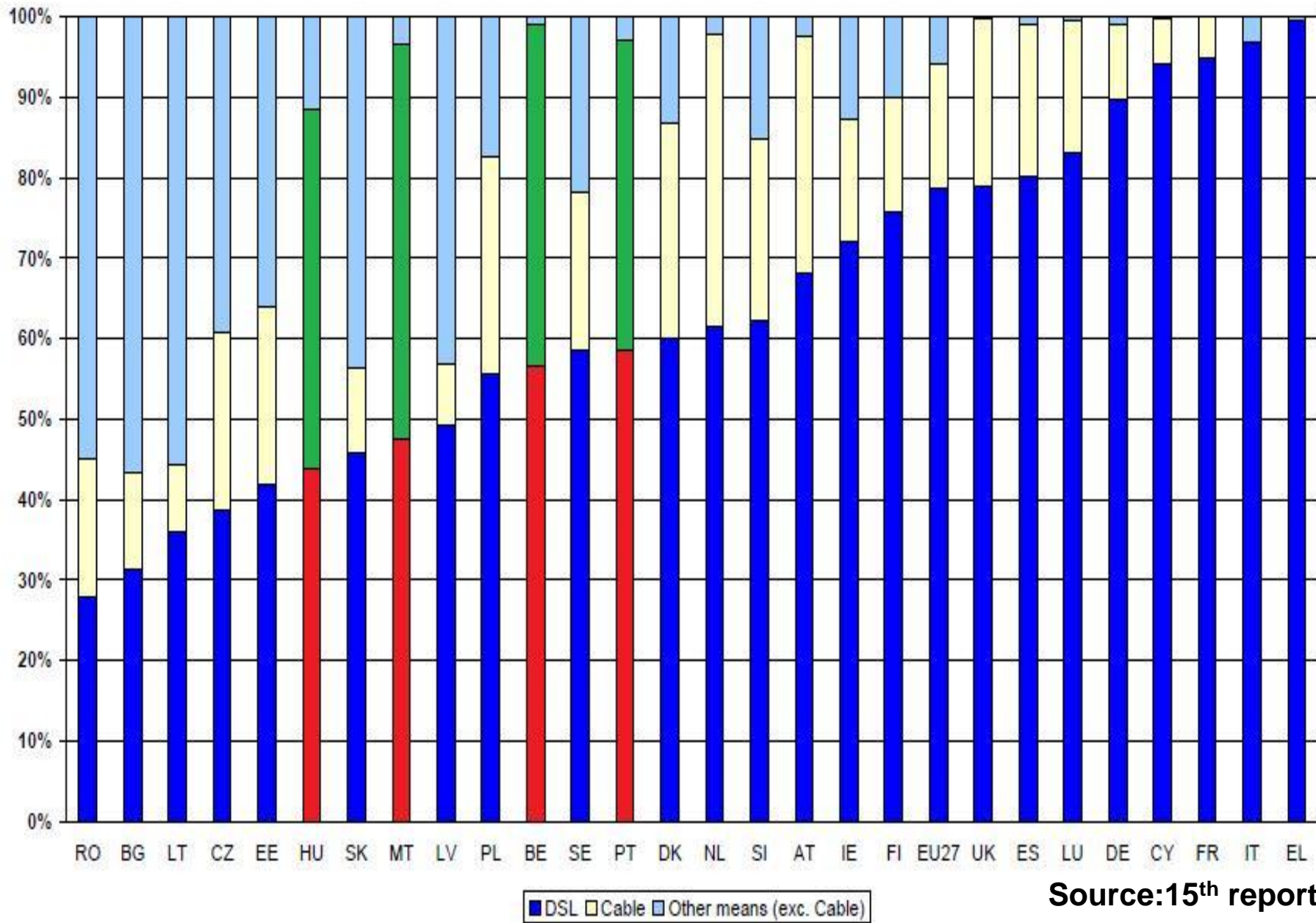
- Sub-national geographic markets
 - Traditionally, network reach and regulatory regime;
 - Currently, degree of competition by factors such as number of players
- Inclusion of cable deregulated some regions.
- Sub-national market analysis is in essence a preliminary assessment of SMP.
- Therefore, the Commission agreed with this approach.

Conclusions

- Two Conclusions:
 - Cable should in principle not be regulated;
 - But it may exert indirect constraint , and thus could renders the incumbent no SMP;
- One Question:
 - How can cable impose sufficient constraint on copper now and fibre in the future?



Fixed broadband lines by technology, January 2010



Source: 15th report