



By Gerry Oberst

Competition In Satellite Broadcast Distribution

The communications regulatory framework in Europe is based on the principle that most rules should apply only in the case of market failure. Under this approach, if a particular market is competitive, there is no reason for mandatory access rules, rate regulation or other intrusive remedies. So far, no country has sought to apply such rules to satellite operators, a trend we expect to see reinforced under rule changes floated in late 2006.

When the current rules were adopted in 2002, the European Commission issued recommendations on which markets might be likely to lack competition. One of these markets was for distribution facilities used to transmit broadcast signals to end users. These facilities, according to the Commission, included satellite, cable and terrestrial wireless, and European Union (EU) member states were supposed to conduct consultations and analyze their national situations to see if any operators held market power in this and other sectors.

Things did not work out as planned, however, for distribution facilities. First, there was no hard deadline in the EU structure, and member states were slow to complete their market reviews, in particular for broadcast distribution. For instance, as late as October the Commission found it necessary to threaten Sweden and Greece with court action for consistent failure to implement the rules correctly. Out of 25 European countries, nine had not yet analyzed the broadcast distribution markets by that time and only six had adopted final measures by the Commission's estimates.

Second, no member state agreed that cable, satellite and terrestrial facilities form a single market. Instead, countries analyzed cable and terrestrial markets separately from satellite, because no countries thought it was appropriate to regulate satellite operators, which typically are licensed to transmit from another EU country and provide service in a broader footprint than any single country.

In response to the notifications from member states, the Commission suggested that satellite distribution of broadcasting signals might be a pan-European market to be examined later. Finally, in July, Germany came out and said that because

the satellite TV market is significantly wider than German territory, the German regulator was not in a position to analyze or regulate such a supranational market.

Around that same time, the Commission itself was having second thoughts on the market for broadcasting distribution. In late June, as part of a review of the entire regulatory framework, the Commission proposed to revise its market recommendations and asked whether it should delete the broadcast distribution market altogether from the list.

In its call for comments on this proposal, the Commission took no position on whether various transmission systems, including DSL, cable or satellite, are separate retail markets. The Commission said that many factors would be involved, "such as their price, the coverage or availability of the different transmission systems and the ability of end users to switch between broadcasting or transmission platforms."

By contrast, the Commission said that at the wholesale level, the buyers of transmission services should consider the different platforms to complement each other rather than act as substitutes, which means that the wholesale market is segmented by platform. The Commission noted that in general, there is effective competition for satellite and cable transmission across Europe but not for terrestrial over-the-air facilities. Nevertheless, the Commission specifically asked for comments — which were due in late October — on whether there are entry barriers for wholesale provision of satellite broadcast capacity.

Adding another ingredient to this mix, U.K. regulator Ofcom announced in October it would review digital TV platforms, including their capacity and transmission services. Ofcom will look at competition between providers of such services but said it will not consider transmission services provided to platform operators. This approach appears to leave satellite operators out of the review.

Where does this leave the satellite sector? Providing distribution links for TV broadcasters is a major business for European satellite operators, probably the main business. Operators would cheer a decreased risk of burdensome regulations.

No country in Europe has applied rigorous regulation to satellite operators on the theory that they hold a dominant position. The Commission even seems ready to delete the broadcast distribution market altogether from the list of regulatory targets. Satellite operators are likely to agree with this approach and argue that they face an intensely competitive market and do not deserve the higher level of regulation. ▀

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