

Ladies and gentlemen,

Thank you all for being here this morning, and thank you to the organizers for inviting me to this very interesting event. It gives me an opportunity to say a few words about the progressive take-up of new media and the role that the Commission can and must play in ensuring that the potential of these emerging markets is fully exploited.

As you know, the Commission has always paid particular attention to the communications and information society sectors.

Thanks to new technologies and innovation in the field of electronic communications, new products and markets are constantly appearing and developing and the boundaries between new and traditional markets are constantly moving.

As with all developments in communications, people are not interested in the new networks themselves, but in what the new networks make possible. This means that one concern of competition authorities should be to ensure that media content can be provided over new networks and not just the traditional ones. I am not only thinking about the new 3G mobile networks but also broadband DSL and cable connections to the Internet.

As digital technology evolved and convergence began, it became increasingly clear that both the electronic communications and media industries had potential to become engines for productivity and growth.

The distinction between infrastructure services and content services, which has been crucial in the past to inform policy decisions, is becoming increasingly blurred, or, better, their interaction is becoming increasingly vital to ensure the success of both.

It is clear, however, that although electronic communication networks have tremendous potential there is still a gap between this potential and the growth in demand for new products that we see in reality.

The speed with which the industry will fill this gap will depend on the drivers of growth. In particular, availability of content is likely to lead to new electronic communication networks like 3G mobile and

broadband internet developing into new media delivery platforms, which in turn will spur the development of the networks themselves.

Let me therefore continue by focusing on the following three main issues: First, the state of the art in the development of new media, notably 3G mobile services; second, a reflection on the role that availability of attractive content, such as football, can play in the development of these new markets; and finally the identification of the possible competition concerns related to availability of attractive content by new media operators and an outline of Commission's past and future competition action aimed at granting a healthy and rapid growth of these new markets.

With regard to this last point, I would like to stress the importance of the new regulatory framework for electronic communications in the growth of both the electronic communications and the media sector. I will not dwell on the details of the framework, which will be well known to many of you.

But I cannot resist noting the parallel between the convergence between electronic communications and media, on the one hand, and between competition enforcement and regulation, on the other, the latter being a key driver for the success of innovation and competition in the sector.

Perspective for growth in emerging media markets and the importance of content for the development of such markets

New media distribution mechanisms such as the Internet (broadband connections) and the mobile phones (notably UMTS and to a certain extent GPRS technologies) provide the same or similar content as those provided by traditional media but over different networks and, to some extent over different devices. Let me stress at this point, that we distinguish between new media and technologies like digital terrestrial transmission of TV signals which is better viewed as a new technology for a traditional medium.

Although both broadband Internet and 3G mobile services fall within this definition of new media, I will mainly focus today on availability of content, mainly rights for sports (football) events, for 3G mobile

services. This is the subject of the sector enquiry on acquisition of content by mobile operators that the Commission launched in January this year which aims to gather more information about the state of competition in this market. A second similar sector enquiry on the sale of similar rights to Internet operators will be launched in the second half of the year.

I will return to these enquiries in the second part of my speech, but first let me describe the significant developments in this industry

Mobile communications and the Internet have been the two main drivers of consumer demand for telecommunication services in the last decade.

It is therefore likely that demand will drive further growth once convergence brings these two together and new media content delivery services become comparable if not superior to those provided by traditional broadcasters. However, while it is easy to believe that the convergence of mobile communications, Internet and content delivery will produce something significant, the experience of the last few years has taught industry that the take off of these new technologies might take longer than expected.

This has certainly been the case for 3G mobile services, the great expectations for which led mobile operators and investors in most EU countries to pay enormous license fees. This has also been the case for broadband DSL technology which, after the big scepticism caused by the explosion of the dot com bubble, is today again showing steady growth - thanks also to the EU's clear commitment expressed in the Lisbon strategy.

Nonetheless, the worldwide expansion of 3G services, more generally, continues at a surprising pace and the combination of mobile and Internet technologies, (for example i-mode), is already transforming the way people interact and the way business is done.

UMTS is now being rapidly deployed around the world with customer growth at a rate faster than that experienced by GSM at the same point in its development. In Europe, 40 new networks are due to be launched in the next months against five countries only that have the service so far

(Sweden, Denmark, UK, Austria and Italy).

This would seem to indicate that the enthusiasm that accompanied the launch of the UMTS technology and that justified the payment of very high fees for the licenses was not completely misplaced and makes it all the more important for all of the relevant players (including the Commission) to work towards a truly competitive environment.

The growth of new media and of mobile Internet, in particular, depends, first and foremost, on the timely deployment of high-speed 3G networks, and the availability and affordability of adequate Internet-enabled handsets. But it is equally crucial to ensure access to attractive content, such as rights to premium sport events. Such rights are generally perceived by mobile operators as being an important driver for 3G mobile services growth.

This point is common to broadband internet services as well. Although the other main drivers for the diffusion of this technology are different from those characterising 3G mobile services, it is generally acknowledged that in the future content delivery will be the main source of revenues for broadband operators. These revenues seem likely to overtake - even in the short term - the revenues coming from the provision of simple access to the Internet.

In light of the above, the question arises as to what constitutes attractive content for new media operators and whether and to what extent such content is nowadays available to them. I will try to answer these questions focusing again on 3G mobile services and on rights for major sports events.

Availability of premium content for new media on the market

The importance of access to attractive content for the success of all media is generally recognised by most operators. Some content, such as rights to top international and national football, play a crucial role, and are "must-have" elements to build up an attractive offer. This appears to be as much the case for new media and 3G mobile services as it has and continues to be for pay television. Consumers will only invest in the third generation of mobile phones - 81% of the European

population has a second-generation handset today -- if they are offered attractive new features such as the possibility to watch their team or their favourite player score in the European Championships, for example, if they cannot see it live.

Second, sports content is well suited to the technical limitations of mobile devices, through the display of highlights video-clips directly streamed by the operators.

Finally, sports rights for sports played during the whole season constitute a recurrent source of programming on which operators can build an attractive offer, persuading consumers to subscribe to an ongoing service.

Sports content, mainly but not exclusively football rights, seem therefore to be a fundamental input for those operators that have bet on the 3G UMTS technology. A similar reasoning could be made for delivery of content over broadband networks.

In light of the above, since the Commission's general objective is to keep media markets open and to stimulate their growth as much as possible, the Commission needs to ensure that access to such key inputs in the markets for delivery of content is not unjustifiably restricted.

The question that immediately arises in this regard is whether and at what conditions such content can be accessed by new media operators and in particular by 3G operators.

In order to give an answer to this question there are several elements that must be taken into consideration.

First, one should look at the assessment made and the position taken by the Commission in its most recent decisions applying European competition law (both antitrust rules and the Merger Regulation) in the media sector. In these decisions, which I will detail later, the Commission identified a series of actual or potential market failures and adopted remedies to keep the downstream markets for delivery of content open.

Second, one should look at the attitude and behaviour of those players who control the most attractive content.

I refer, here, mainly to content owners, but also to content aggregators and, last but not least, to those content providers (mainly incumbent free to air or pay-TV broadcasters) which acquire rights for delivery of content over technological platforms different to those on which they are active.

As regards the attitude and behaviour of media operators, the Commission has carried out several fact-finding activities aimed at gathering information on this subject. Our review, which focuses on the availability of rights to major sport events, notably football, has so far shown a generally negative attitude by the relevant players towards making premium content available for delivery over platforms different from the traditional ones.

This is of course the case for incumbent free to air and Pay TV broadcasters which see access by new media operators to such rights as a threat to their revenues.

Strangely enough, this is also the case for content aggregators and content owners who, different to incumbent broadcasters, should get economic advantages in terms of an increase of their revenues from the development and success of new media platforms. These operators, however, are most of the time sceptical about new media since they fear that delivery of content through them would result in a reduction of traditional revenues not compensated by the new - and additional - revenues.

This would most of the time result in a chicken and egg situation where, on the one hand, content owners will ask guarantees (in terms of minimum revenues) that new media operators can afford only once reached a critical mass of users. On the other hand the only way for new media operators to reach that critical mass is that of disposing of attractive content.

It's clear such behaviour may, in some occasions and under certain conditions, be incompatible with European competition rules. There have

already been several cases where the Commission has intervened to bring behaviour into line with the competition rules and, to the extent possible, to open up the upstream markets for the acquisition of content to new media operators.

One final remark as regards what can be considered as an attractive content for media operators. Although the above reasoning is mainly focused on major sports rights (and in particular football) a similar reasoning can be made with regard to all attractive contents i.e. those contents that are important, if not "must-have" elements for content providers to build up an attractive offer. In this regard one must take into consideration that in the future as the taste of the end users, the market trends and, of course, the technology will change, it is likely that also what is perceived as an attractive content might change. All market players should therefore show an open attitude also in this respect.

Application of EC Competition rules in the media sector

Let me turn briefly to the application of competition rules in the media sector.

The Commission has consistently tried to combine the need to make access to "premium content" in the media sector compatible with the particular economics of each situation. In the merger field, with its recent NewsCorp/Telepiu decision - which has to be seen against the disruption that would have been caused by the likely closure of Stream - the Commission accepted the creation of a near monopoly on the satellite platform while imposing strict conditions to ensure barriers to entry remain as low as possible and to keep the other relevant media markets open for potential entrants and competition.

More generally, when applying competition rules the Commission has identified several types of behaviour by established players that restrict access to key sports content by new media operators, especially in the 3G sector.

Such behaviour would chiefly take the form of refusals to supply, the bundling of TV rights with new media/UMTS rights, the existence of

embargoes favouring TV coverage over new types of coverage or the purchase of new media/UMTS rights on an exclusive basis.

The Commission has encountered certain of these practices when dealing with the sale of the media rights to the Champions League European football tournament and the sale of the rights to the English and German premier leagues. In all cases, it is taking care to ensure that access to such popular rights is not monopolised to the detriment of new competition, a task which is neither easy, nor finished. We are also currently looking at the sale of the media rights to the Olympic Games.

The Commission decisions taken so far has brought football within the reach of more broadcasters as well as Internet and telephone operators, and permitting clubs to market part of these rights individually. In practice, it means, for example, that in 2003 UEFA agreed to sell UMTS and Internet rights, for the first time, for the Champions League. According to a provisional settlement with the Premier League, which we published recently, the Commission is also seeking to ensure that rights for new markets such as Internet and UMTS are made available for the 2004 season onwards.

The Commission's intervention in the media sector has produced two effects. On the one hand they have ensured the compatibility of the behaviour of the market players with the European competition rules. This, as you know, has many positive consequences in terms of preventing future restrictions as well as providing guidance for those same market players. On the other hand, these actions have contributed to the development of competition in the sector by making access to attractive content (mainly but not only football) easier - especially for new media operators.

The justified satisfaction with the important results already achieved does not mean, however, that we can step back from our commitment to ensure that new media is allowed to develop fairly. These interventions have been extremely important in helping new media platforms in gaining access to attractive content. However, we certainly do not have the illusion of having removed once and for all the obstacles that, as far as access to content is concerned, might hamper the development and opening to competition of new media markets. The Commission therefore

needs to develop a more comprehensive and rapid intervention in the application of the competition rules. To do that the main input needed is information.

I therefore consider today's meeting not only an occasion to express the position of the Commission on these issues but also an important opportunity to gather as much useful information as possible for our activity. I would therefore encourage any of you being in possession of information that might be useful for us to contact my services.

The sector enquiry on new media and the ex post enforcement of Antitrust rules

This need for continuously updated information is even bigger in a rapidly changing economic environment like new media. One of the main goals of competition enforcement is to act as early as possible in the face of competition problems, so as to make sure that economic activity is not impeded by anticompetitive restraints. Although treating such restraints on a case by case basis remains our main enforcement instrument, there are certain results that it cannot achieve. In particular, it does not easily allow the tracking and targeting of anticompetitive behaviour neither in its early stages nor to provide early guidance to operators. For a number of reasons that I will not mention, but of which you are all aware, the Commission needs a substantial amount of time to carry out its assessment and apply competition rules. As a consequence, the case by case action needs sometimes to be complemented by other actions that will make it quicker and wider in scope.

Tracking and targeting anticompetitive behaviour in emerging markets is a clear priority, for two main reasons. The first is that new markets are of key importance for the development of the European economy. Their unhindered growth is an essential condition of Europe's ability to stand its grounds in increasingly internationalized markets. Building a knowledge-based society, as set out in the Lisbon strategy, depends heavily on the vigour of competition and innovation.

The second reason for such focus is that new markets are at risk of particular competition threats. Indeed, in many cases, innovation builds

up as a challenge to existing technologies and/or processes. As such, it pits new players against established firms. Such configurations obviously create incentives for the incumbents to try and block or curtail the new dynamics in the market place, to try and maintain their position at the expense of the innovators.

It is also very important to provide guidance for those emerging markets. This may be done through a regulatory framework in the cases where market power or technical restraints call for heightened scrutiny. However, in other contexts, guidance will serve to help the operators construct their strategies with increased legal certainty, and make sure that those develop in ways that do not result in an obstruction of competition.

In order to achieve all of this the Commission has decided to use the instrument of the sector enquiry.

Sector inquiries are set to play a key role in policy making since they allow a wide sharing of the results and help stimulate debate over a particular market. In addition to wide consultation, it is an essential means to dwell deep in the workings of a particular sector. This is because the data collected in the sector inquiry covers the legal environment as well as business strategies, contracts, technical elements, and financial conditions.

Such a comprehensive view is a key step in defining which principles should apply to a given sector. Finally sector inquiries may also help to provide a reasonable degree of legal certainty to market operators thus resulting in very useful guidance for them.

The sector inquiry into the sale of sports rights to 3G mobile operators was launched in January 2004. The first stage of implementation of the Inquiry is now fully under way. Information requests have been sent to the concerned undertakings and authorities, through a first wave of questionnaires that has reached the market in May. This wave targeted UMTS/3G operators, rights holders, clubs as well as federations, sports agencies, television channels, Mobile content aggregators and other relevant players. The deadline for answers having just expired on 1 July 2004, we are now starting to collate the data and analyse it

extensively. A further in-depth questionnaire will also be sent soon.

For the second half of the year the launch of a second sector inquiry into content provision over the Internet is planned. Recent developments such as in video on demand have shown that there is currently a very intense demand in that field, hindered however by strong tendencies by established TV operators to protect their position to the detriment of new technologies and new players.

Under this new enquiry we will focus on the three main types of content which are delivered through the Internet: music, films and of course again sports.

I would again recommend all those that are present here today who receives one of our requests for information to answer as quickly and comprehensively as possible.

Conclusion

Let me conclude by saying that the Media sector is, and will remain, on the top of the agenda for the application of European competition policy. Across Europe the Commission will carefully monitor market developments and act wherever we detect foreclosure of markets. Availability of attractive content - notably sports (football) rights but also music, film rights and anything that will be considered as an attractive content in the future - will continue to be kept under close scrutiny using all the powerful legal instruments that the recent modernisation of the antitrust rules has put at our disposal. This is of course even more true for the new media whose rapid and undisturbed development is one of the major goals for the Commission in the next years. We are doing and will do all that is in our power to achieve this goal.

Thank you for your kind attention.