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The future of EU electronic communications regulation: Is it time for a revolution?

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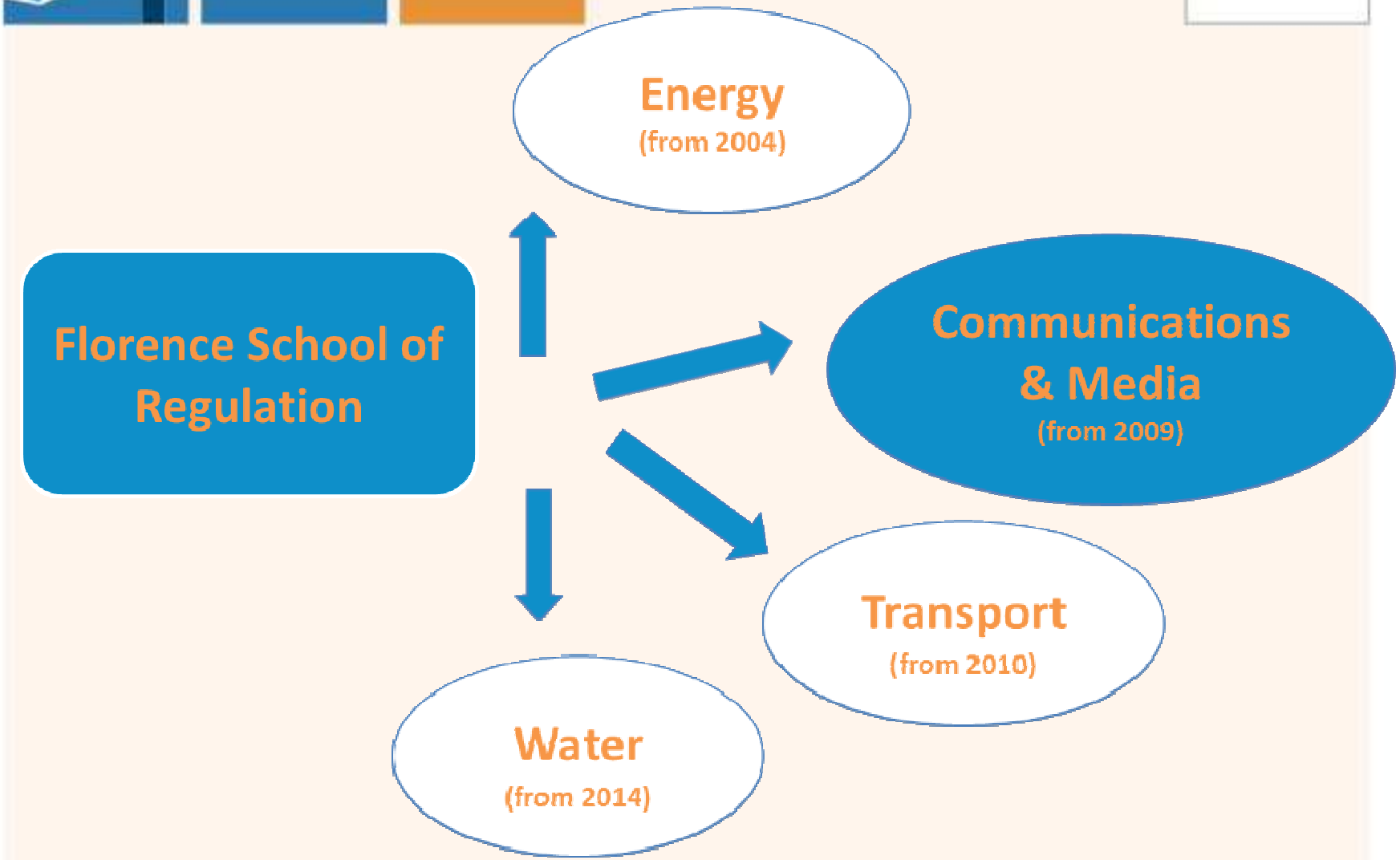

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- Open to officers from NRAs, European Commission and private companies

Block 1
Competition and Regulation in the Telecom sector
26-30 October 2015

Block 2
Internet Technology, Law and Economics Part I: Search, Advertising and e-Commerce
10-12 December 2015

Block 3
Internet Technology, Law and Economics Part II: Video, News and Applications
11-13 February 2016

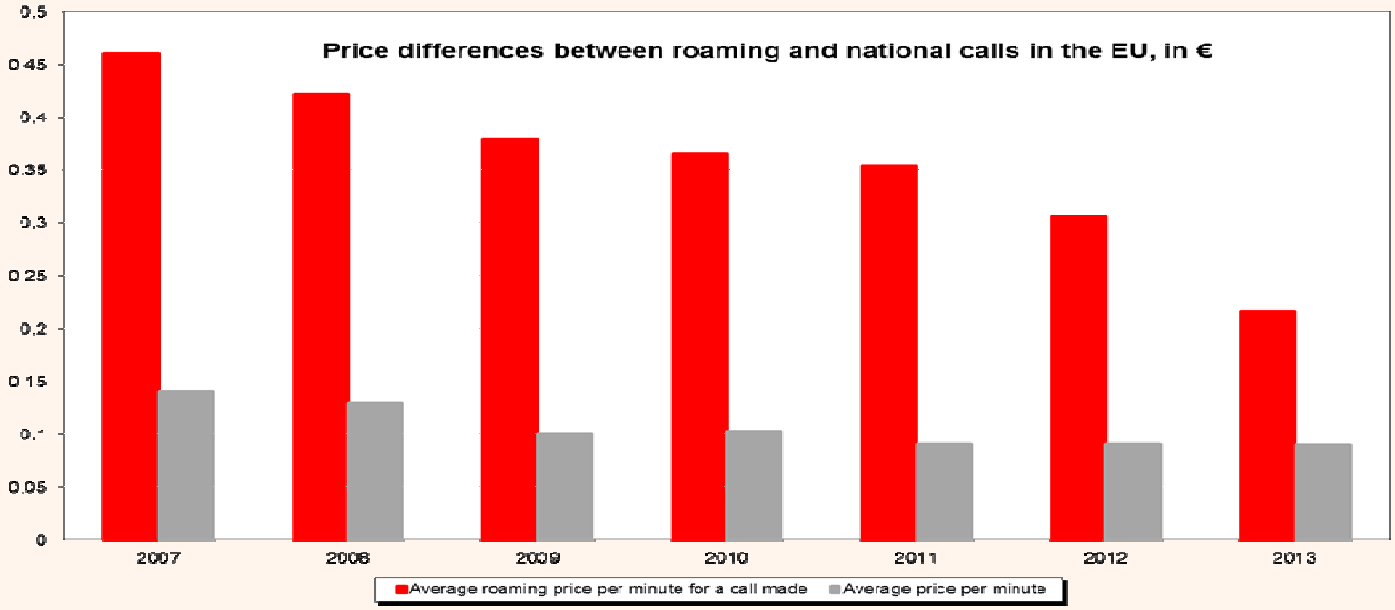
Block 4
Internet Technology, Law and Economics Part III: Big Data, Cloud and Security
14-16 April 2016

The present status of regulation

- A number of historical regulatory issues concerning telecoms have been essentially solved (mainly with regard to prices):
  - Interconnections
  - Terminations
  - Incumbents' market power
  - Roaming

The present status of regulation: an example

- **Roaming** is a successful example: the EU has achieved retail price reductions across calls, SMS and data of over 80% since 2007. It looks like the problem will be extinct by 2017…



Source:BEREC and Communication Committee

The way forward

- The declared final target is the establishment of a truly effective **Digital Single Market** in Europe
- However, the European Commission is the first to realize that this target at the moment is still very far
- For this reason, they have recently tried two new attempts

The EC's new way – attempt I

- **September 2013**: Connected Continent package
  - Increased cooperation among national regulators, continuity in governance, and strengthened role of the Commission (veto powers)
  - Introduction of common consumer standards
  - Removal of charges for incoming calls while roaming, as well as unjustified surcharges for intra-EU calls
  - Safeguard access to the open Internet
  - Less red tape for companies' pan-European activities (minor complexity in investing and providing services across borders)
  - Harmonisation essential technical "inputs" such spectrum for wireless networks and access to networks for fixed broadband
  - Strengthening the role of the Chair of the Body of European Regulators (BEREC), creating a 3-year full time post, to ensure more strategic planning and greater continuity

The EC's new way – attempt II

- May 2015: Digital Single Market Strategy for Europe

Actions[22]	Timetable
Better access for consumers and businesses to digital goods and services across Europe	
Legislative proposals for simple and effective cross-border contract rules for consumers and businesses	2015
Review the Regulation on Consumer Protection Cooperation	2016
Measures in the area of parcel delivery	2016
A wide ranging review to prepare legislative proposals to tackle unjustified Geo-blocking	2015
Competition sector inquiry into e-commerce, relating to the online trade of goods and the online provision of services	2015
Legislative proposals for a reform of the copyright regime	2015
Review of the Satellite and Cable Directive	2015/2016
Legislative proposals to reduce the administrative burden on businesses arising from different VAT regimes	2016
Creating the right conditions for digital networks and services to flourish	
Legislative proposals to reform the current telecoms rules	2016
Review the Audiovisual Media Services Directive	2016
Comprehensive analysis of the role of platforms in the market including illegal content on the Internet	2015
Review the e-Privacy Directive	2016
Establishment of a Cybersecurity contractual Public-Private Partnership	2016
Maximising the growth potential of the Digital Economy	
Initiatives on data ownership, free flow of data (e.g. between cloud providers) and on a European Cloud	2016
Adoption of a Priority ICT Standards Plan and extending the European Interoperability Framework for public services	2015
New e-Government Action Plan including an initiative on the 'Once-Only' principle and an initiative on building up the interconnection of business registers	2016

How to start the new way?

- In face of the technological and economic challenges that are stressing traditional regulation, we identify two general approaches:
  - The "*current route*" ⇨ leaving the European regulatory policy to continue in its present evolution, trying to progressively adapt and react to technological and market changes
  - The "*new route*" ⇨ a more proactive approach with the establishment of a new balance between ex-ante and ex-post intervention and a more active pursuit of the preservation of fundamental rights of European citizens in the digital dimension

The current route

- Following the *current route* may be unable or too slow in tackling several critical problems:
  - the OTTs - Telcos conflict
  - The lack of a common level playing field
  - The commoditisation of the European networks
  - The limited incentives to invest
  - The risk of business dispersion and disruption
  - The increase in fiscal conflict

The current route

- The May 2015 Communication seems to recognise the importance of many of these issues
- However, because we don't know yet the exact methodology and content of the planned actions, it is doubtful if the answers will be adequate to the level of these challenges
- Furthermore, without a clear methodology one may risk uncoordinated effects between the different and overlapping sectors of intervention

The new route

- Exploring the *new route* calls for a number of actions:
  - Shaping a proper and ambitious State aid policy towards the Digital Agenda
  - Supporting a smart pan-European merger policy towards the Single Market
  - Reconsidering and reducing current regulatory burdens for players
  - Relying increasingly on competition tools
  - Boosting negotiated policy and agreed remedies
  - Focusing ex-ante regulation on the protection of fundamental rights and freedoms

A few comments

- So far, the European Commission does not appear to have chosen between the two approaches: continuity vs. innovation
- In the new Commission's Communication, the scope of attention is widening, reaching for an increasing variety of goods, services and players, and this is consistent with markets' evolution
- Apparently, there is also a recognition that the space and the need for traditional ex-ante regulation is shrinking, both because of successful overtaking of previous bottlenecks, and because of endogenous market changes
- Also, the protection of fundamental rights seems to be gaining more centrality while planning interventions. This may change the scope of future regulation and regulatory activity

A few comments

- There is still uncertainty about the definition on some key concepts (platforms competition, intermediaries' liability, data mining, etc.), and this negatively impacts the possibility of effective intervention

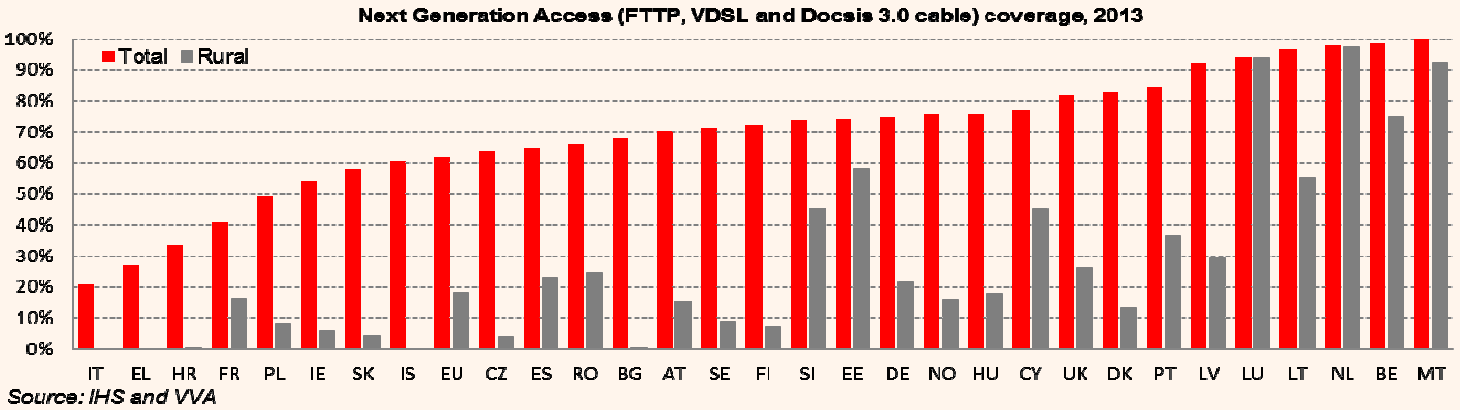
- A cautious assessment of the economic impact of each policy/regulatory initiative may be needed in order to ensure that the Europe 2020 Strategy plan will be realised

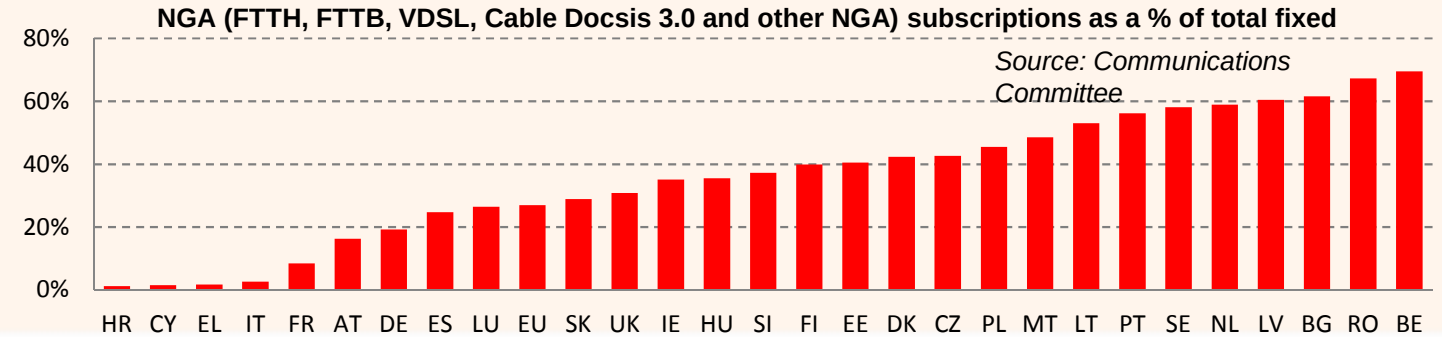
- While dealing with the different issues, the Commission has to take into due account resistances and diversities of approach at national level

- **But do we really believe that the DSM is an achievable target?**

Let's look at networks

- ….for example, we are extremely far in terms of network coverage and subscriptions.





Let's look at networks

- The impression is that, while it has been possible to solve a number of regulatory issues concerning traditional technologies, when it comes to the new ones we are still far from an effective and harmonized approach.

- If we work from the perspective of the Single Market, we could identify a number of instruments towards an effective regulation and possibly convergence:

  - While applying general common principles, appropriate space should be left for temporary differentiated geographical regulation.

  - Tools aimed at convergence should be applied to overcome the persistence of national diversities. In this sense, the role of State aid rules should be carefully assessed in relation to the DSM objective.

  - Finally, also a more positive approach towards cross-border mergers could be considered. The aim here is that economy of scale could become a major incentive for the harmonization of business models all over the EU.

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Internet poses new challenges

- Innovation
- Video content
- Copyright
- Cloud
- Big data
- Privacy
- Cybersecurity

Some conclusions

- It is too early to advance judgments on the new Commission's strategy; we need to wait until the text of the different legislative/review proposals

- Our analysis and our preference however are clear. Regulatory policy in Europe has been a long term success story; unfortunately even the best institutional construct can grow old in a rapidly changing environment, and there is no environment that changes faster than the online ecosystem

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Some conclusions

- With regard to traditional regulatory issues, reducing the scope of regulation and widening the use of competition tools could be the best solution

- On the contrary, regulation might be needed to solve some new challenges posed by the Internet, especially when the protection of fundamental rights is at stake. In fact, in those cases ex-post interventions might come too late

- As a consequence, the role of regulators should change, and so the tools they use to intervene

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Many thanks for your attention!