



GSM Europe

The European interest group of the GSM Association

***GSM Europe Comments to the Commission's Communication related to
the Introduction of Third Generation Mobile Communications in the
European Union: State of Play and Way Forward***

***GSME Europe
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RE: GSM Europe Comments to the Commission's Communication related to the Introduction of Third Generation Mobile Communications in the European Union: State of Play and Way Forward

GSM Europe welcomes the Communication from the Commission on the status of the introduction of 3G services in the European Union as it underlines most of the critical issues that the mobile industry is facing in its migration from 2G to 3G services.

Background

The development of 3G networks and services will enable fast data services and multimedia applications to be made available on mobile terminals.

Mobile communications is one of the only technology sectors where Europe has leadership over the USA and Japan and it is an excellent example of how new technology and services might help to create a truly Single Market. The mobile industry has significantly contributed to the growth of the European economy during the last decade through the successful provision of 2G services mainly based on voice.

The prospective introduction of 3G services is bringing the mobile sector toward the edge of a tremendous change that will introduce new ways of communication by combining the possibility of accessing content and innovative services offered by the Internet and Internet related applications with the convenience of mobile communications. The new technology will potentially create new markets where European industry is likely to extend its leadership.

However, in recent months the economic and regulatory prospects for the introduction of 3G services have not fared well. As highlighted by the Commission, the general downturn of financial markets combined with a number of other specific external factors related to the mobile industry are putting at risk the fast deployment of 3G networks.

GSM Europe has identified five potential barriers to the effective introduction of 3G services in the European Union that need special attention by EU and national institutions:

- A future regulatory framework that might increase the regulatory intervention on competitive and dynamic markets such as mobile communications
- Lack of harmonisation of the licensing process that has led to high charges for 3G licences and/or burdensome licence obligations in some countries
- Increasing difficulties in the installation of antennas due to public perception over health and environmental concerns

- Existing and future economic and fiscal policies that put the mobile sector at disadvantage with respect to the rest of the telecommunications sector or, more generally, to other economic sectors
- Persistent lack of confidence by consumers in e-commerce and e-payment activities

We welcome the fact that the Commission is willing to take action on this subject. In particular, GSM Europe believes that the call by the Commission to develop an appropriate new regulatory framework, to re-discuss existing licensing and regulatory conditions, to maintain a high level of research in the sector, including through Community Framework Programmes, to facilitate the introduction of technical protocols for 3G standard is going in the right direction.

However, this might not be enough. To restore the confidence necessary for the high risk investments required for the developments of 3G services, EU and national institutions will need to go forward with a series of actions in the following areas.

New regulatory framework

The review of the existing regulatory framework of electronic communications should result in the transition from sector specific regulation to standard competition law by using the principles of the latter for the application of ex-ante obligations. We believe this review is a unique opportunity to restore confidence in 3G and to create the appropriate regulatory framework. This original aim of the Commission, which is also shared by the mobile industry, is however facing a series of hurdles that might lead in fact, to more regulatory burden and intervention in competitive and dynamic sectors such as mobile communications.

As mentioned by the Commission in its Communication, it is essential to give legal certainty to investors. GSM Europe urges the Commission and Member States to make a strong political commitment to ensuring regulatory intervention in mobile markets in all Members States is limited to the minimum necessary to solve non-transitory competition problems. In particular, as highlighted by the draft Report of the European Parliament on the Universal Services Directive, we also share the view that the introduction of price controls in the mobile market would seriously jeopardise the development of 3G. In this context, a strong co-ordination mechanism led by the Commission is essential to increase harmonisation - taking into account the level of national competition - and to ensure that the discretionary powers given to National Regulatory Authorities is not abused.

Harmonisation of licensing procedures and license conditions

GSM Europe shares the view of the Commission, that the un-harmonised license award procedures (auctions and competitive bidding) together with varying license conditions/obligations across the Community give rise to concern in relation to the development of Europe's single telecommunications market.

Very uneven conditions may lead to varying investment incentives in national markets and may eventually give rise to some discrepancy with respect to the levels of mobile service developments, disadvantaging investors in new mobile services and consumers.

The general and too open principles contained in the Licencing Directive currently in force have not been enough to ensure harmonisation of licensing procedures and conditions for 3G services at the EU level. It is essential that the new Authorisation Directive and the Spectrum Decision will contain clear provisions that guarantee harmonisation for future assignment of frequencies/licenses.

Moreover, Member States do not have in place a market for secondary trading of spectrum. If the market is the best allocator of scarce resources, as most economists would argue, it is important that Member States should be able to develop their own spectrum trading arrangements. GSM Europe is aware that spectrum trading is not allowed in some Member States and that this anomaly is being removed by the 1999 Review. Therefore, where possible, Member States should be encouraged to consider introducing a secondary market for spectrum.

Roll-out of 3G networks and services

Where it is clearly too late to address the wide differences that have occurred in the 3G licensing procedures, Member States should acknowledge that for future licensing procedures more co-ordination is of the utmost importance.

With respect to the current 3G licenses, GSM Europe welcomes the initiative of the Commission to launch a dialogue with Member States, 3G operators and equipment manufacturers. There is a burning need to address a number of issues under current legislation such as:

- *Duration of licenses:* 3G licence duration in Europe varies from 12 years to 20 years with the possibility of renewal in many countries. GSM Europe believes that licence duration should be harmonised at the upper limit of 20 years with the possibility of renewal as this would help 3G operators to secure investments with long term prospects;
- *Extension bands:* additional 3G frequencies will be available in the future in the IMT 2000 extension bands or in the satellite core band: their allocation to

3G licensees without additional fees will guarantee the introduction of innovative services and the availability of enough capacity to cope with long term demand for 3G services;

- *Sharing of facilities*: it is important not to impede commercial negotiations on facility sharing among mobile operators, provided that licence conditions allow it and competition is not distorted;
- *Date of launch obligations*: Delays in the provision of 3G equipment should allow for a "délai de grâce" for date of launch obligations contained in many licences;
- Transparency and non-discriminatory measures and conditions should be guaranteed for all the 3G licensees competing in a same Member State;
- *Health & environment policies*: careful consideration should be given to the effect of health & environment policies on the deployment of networks;
- *Planning policies*: Member States should avoid introducing more restrictive planning regulations.

Economic and Fiscal policy

The telecommunications sector in general and the mobile communications sector in particular are subject to a penalising economic policy if compared to other economic sectors. Whereas the fiscal burden varies from one Member State to another, the economic and fiscal burden in some countries may include excessive licence fees, frequencies fees, Universal Service contributions, higher VAT rates, fees for Rights of Ways and general additional taxes that might amount to a high percentage of turnover.

Taking into account the fact that a large share of EU economic development and growth is related to communications, this sector should be treated in the same way as others from a fiscal point of view.

Health and environment policy

Mobile operators are facing increasing difficulties in the installation of the antennas necessary for the deployment of 2G and now 3G networks due to public concern toward the alleged health impact of radio signals and other environmental concerns. GSM Europe stresses that there is no convincing independent scientific research of a link between electromagnetic fields generated by mobile telecommunications systems and human health.

Recent government commissioned expert reviews in the UK, Netherlands, Sweden, France and Italy confirm this position.

These public fears, however unsubstantiated, have lead the national and local authorities of some Member States to apply, as a "precautionary" measure,

restrictions on site licensing. Although recognising that public fears should be addressed as a matter of principle, GSM Europe would like to point out that these measures when randomly applied and without scientific basis may cause serious disturbance to the deployment of mobile networks and ultimately limit the success of 3G in Europe. In addition, GSM Europe notes that these 'precautionary' actions are generally not consistent with the European Commission *Communication on the Precautionary Principle* (February 2000) and are contrary to WHO advice. GSM Europe reminds all of the Council Recommendation 1999/519/EC, which specified the exposure guidelines, developed by the ICNIRP, a WHO expert advisory group. Policy should take into account relevant environmental, amenity and scientifically based health criteria, in order to create a framework to support the necessary rollout of telephony/communication systems and protect broad environmental considerations.

GSM Europe members are currently supporting quality research programmes at the EU (5th Framework Program) and Member State level, based on a WHO research agenda. GSM Europe welcomes the fact that 3G mobile communications is one of the research objective included in the 6th research and technological development Framework Program 2002-2006. The use of this budget to support quality research programs, on the impact of radio signals on human health, will provide the basis for on-going review of the ICNIRP guidelines. GSM Europe supports initiatives to provide information to the public on wireless technologies in a balanced, trusted and objective way.

High level research

It is important that the new framework program devotes funds to further enhance and develop the existing 3G standard and related applications. GSM Europe believes however that any research on possible 4G services might put at risk confidence in the 3G standard resulting in possible reductions and delays in investments on 3G networks and services.

IPv6 introduction

The Internet protocol necessary for the introduction of 3G services should be promoted as the recognised standard. GSM Europe stresses, however, that the introduction of IPv6 should be market led.

Security of e-commerce and e-payments

In the context of 3G, Internet based services will be of paramount importance, as the success of this new technology will not be able to rely solely on the provision of voice services, as GSM services have.

Recent survey shows that the use of Internet services in Europe, namely *e-commerce*, is below the US level and, given the high level of investments made, far below the needs of future 3G operators. Therefore, it is of paramount importance that steps are taken to increase consumer confidence in the use of Internet. Among those measures the rapid implementation of both the *e-signature* and *e-commerce* Directives are vital to bring legal certainty and to create a safe environment for the use of web based commercial services.

Therefore, GSM Europe endorses the proposals to speed up the introduction at national levels of legislation destined to enhance the safe use of electronic commerce, specifically those regarding the security of payments through the web.

In addition, Governments and EU institutions could give the right example to consumers by being the front-runners in the adoption of 3G services in their day-to-day activities through specific *e-governance* initiatives.

Conclusions

Recent developments, both economic and regulatory, have cast doubts over the EU mobile industry *vis a vis* the enormous financial effort undertaken by operators to pay for their expensive 3G licenses.

In order to turn the negative feeling that is sweeping across European mobile sector and to maintain the leadership that Europe has over its global competitors, strong actions are needed by European and national institutions that include:

- A strong political commitment from the Commission and the Member States to keep regulation in the future to a minimum and to apply general competition rules to the mobile sector as soon as possible;
- As a matter of urgency, the organisation by the Commission of a hearing gathering experts from Member States, mobile operators and manufacturers to examine and make recommendation on the issues related to the roll-out of 3G networks (legal treatment of delays in 3G deployment, license duration, network infrastructure sharing, etc);
- Guaranteeing harmonisation of licensing procedures in the future ;
- Development of a common and coherent approach toward site/antenna licensing

- Planning policy should not be further restricted with further regulation, delaying 3G roll-out.
- Elimination of any fiscal disadvantages faced by the mobile sector with respect to other economic sectors
- Enhancing consumer confidence on the safe use of Internet, namely toward e-commerce activities